



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 395

Hours of Service; Electronic Logging Devices; Limited 90-Day Waiver for the Transportation of Agricultural Commodities

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notification; grant of waiver.

SUMMARY: FMCSA grants a limited 90-day waiver from the Federal hours-of-service (HOS) regulations pertaining to electronic logging devices (ELDs) for the transportation of agricultural commodities as defined in the Federal Motor Carrier Safety Regulations (FMCSRs). The Agency has determined that the waiver is in the public interest and will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption, based on the terms and conditions imposed. The waiver provides the Agency additional time to complete its analysis of the public responses to its December 20, 2017, notice of proposed regulatory guidance to clarify the applicability of the “Agricultural commodity” exception to the hours-of-service regulations and issue final guidance which in turn, would have an impact on which drivers transporting agricultural commodities are required to use ELDs, and the public responses to its October 31, 2017, document announcing receipt of the NPPC’s application for an exemption from the ELD requirements and to issue a decision whether to grant NPPC’s request for longer-term relief from the ELD rule. The Agency has determined through its preliminary analysis of the public comments submitted to the

public dockets that the issues raised by transporters of agricultural commodities are more complex than those raised by other segments of the industry seeking relief from the ELD requirements and that it is appropriate to take additional time to bring these matters to closure.

DATES: This waiver is applicable beginning March 18, 2018, and expires on June 18, 2018.

FOR FURTHER INFORMATION CONTACT: Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE, Washington, DC 20590. E-mail: MCPSD@dot.gov. Phone : (614) 942-6477.

SUPPLEMENTARY INFORMATION:

Legal Basis

The Transportation Equity Act for the 21st Century (TEA-21) (Public Law 105-178, 112 Stat. 107, June 9, 1998) provides the Secretary of Transportation (the Secretary) the authority to grant waivers from any of the FMCSRs issued under Chapter 313 of Title 49 of the United States Code or 49 U.S.C. 31136, to a person(s) seeking regulatory relief. (49 U.S.C. 31136(e), 31315(a)). The Secretary must make a determination that the waiver is in the public interest, and that it is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver. Individual waivers may be granted only for a specific unique, non-emergency event, for a period up to three months. TEA-21 authorizes the Secretary to grant waivers without requesting public comment, and without providing public notice.

The Administrator of FMCSA has been delegated authority under 49 CFR 1.87(e) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 311, subchapters I and III, relating to commercial motor vehicle programs and safety regulation.

Background

The FMCSA received an application for an exemption and waiver from the NPPC on behalf of eight organizations that represent transporters of livestock and other agricultural commodities. Notice of the request for exemption from the requirement that a motor carrier require each of its drivers to use an electronic logging device (ELD) no later than December 18, 2017, to record the driver's hours-of-service (HOS), was published in the **Federal Register** on October 31, 2017 (82 FR 50358). Comments to that document were due by November 30, 2017 (www.regulations.gov, Docket FMCSA-2017-0297). The Agency received 997 responses to the document announcing receipt of the NPPC exemption application.

FMCSA also received from the Agricultural Retailers Association (ARA) an exemption, waiver, and petition document dated October 25, 2017, requesting that transporters of agricultural commodities and farm supplies for agricultural purposes not be required to use ELDs during an exemption period. Notice of that request was published in the **Federal Register** on December 28, 2017 (82 FR 61531). Comments to that document were due by January 29, 2018 (www.regulations.gov, Docket FMCSA-2017-0336). The Agency received 115 responses to the document announcing receipt of the ARA exemption application.

In addition to NPPC's and ARA's applications, FMCSA received numerous public comments in response to the Agency's December 20, 2017 (82 FR 60360), notice of

proposed regulatory guidance concerning the applicability of the HOS requirements to drivers transporting agricultural commodities. Comments were due by January 19, 2018, but the comment period was subsequently extended to February 20, 2018, in response to a request by the American Trucking Associations. The Agency received 565 responses to that document.

Safety Determination

Although FMCSA does not have an estimate of the number of carriers and drivers that would be covered by this waiver, the Agency believes the population represents a relatively small percentage of the carriers and drivers subject to its oversight and, more specifically, of those subject to the ELD requirements. This belief is based primarily on an analysis the Agency conducted in 2013 when it evaluated a request for a waiver from the 30-minute rest break requirement for the transportation of livestock (July 11, 2013, 78 FR 41716).

FMCSA reviewed its Motor Carrier Management Information System (MCMIS) to determine this information at that time. MCMIS includes the information reported to the Agency by carriers submitting the Motor Carrier Identification Report (FMCSA Form MCS-150), required by 49 CFR 390.19. As of July 3, 2013, MCMIS listed 64,892 motor carriers that identified livestock as a type (though not necessarily the only type) of cargo they transported. These carriers operated 187,606 vehicles and employed 242,676 drivers. And 126,471 of those drivers operated within a 100 air-mile radius of their work-reporting location – a fact that is important because the existing statutory exemptions provide relief from the HOS requirements for these drivers. Therefore, the Agency concluded at that time, the 2013 livestock waiver would not have been applicable

to them, leaving fewer than 116,205 drivers likely to utilize this relief from the 30-minute rest break provision.

The Agency explained in its document granting the waiver that section 345 of the National Highway System Designation Act of 1995 (the NHS Act) (Pub. L. 104-69, 109 Stat. 613), enacted on November 28, 1995, implemented by 49 CFR 395.1(k), provided relief from the HOS requirements for drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if “the transportation is limited to an area within a 100 air-mile radius from the source of the commodities or the distribution point for the farm supplies and is during the planting and harvesting seasons within such State, as determined by the State.”

Section 32101(d) of the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112-141, 126 Stat. 405), enacted on July 6, 2012, expanded that 100 air-mile radius provided by the NHS Act to 150 air miles; FMCSA implemented the provision with a final rule published on March 14, 2013 (78 FR 16189).

In addition, section 32934 of MAP-21 provides statutory exemptions from most of the FMCSRs, including those pertaining to HOS, the commercial driver’s license and driver qualification requirements, for drivers of “covered farm vehicles” (CFVs), a term defined in detail by MAP-21. Among other things, CFV drivers must be owners or operators of farms or ranches, or their employees or family members; for-hire motor carriers are not eligible for the exemptions provided by section 32934. These exemptions are explained in the March 14, 2013, final rule mentioned above.

While the 2013 analysis was targeted at estimating the population of carriers and drivers that would be covered by a livestock waiver from the 30-minute rest break requirement, the Agency believes a similar analysis looking at agricultural commodities in general

would also show that the population likely to need relief from the ELD requirement during the 90-day waiver remains a small fraction of the motor carrier and driver populations subject to the ELD rule. Because of the urgency with which FMCSA must issue decisions on the matters discussed above, the Agency was unable to complete an up-to-date analysis of its MCMIS data before the March 18, 2018, expiration of the 2017 waiver for the transportation of agricultural commodities. However, the Agency will complete that analysis of the MCMIS data within 30 days and place a copy in the docket referenced at the beginning of this notification.

In addition to the 2013 data analysis, the Agency considered information reviewed in reaching a decision to grant a limited 90-day waiver from the HOS requirements for the distribution of an agricultural supply, anhydrous ammonia. The analysis was discussed in depth in an October 6, 2010, **Federal Register** document (75 FR 61626), granting the waiver, and in the Agency's 2017 document granting a limited 90-day waiver from the ELD requirements for motor carriers transporting agricultural commodities. The Agency continues to believe the study results are relevant to the discussion of temporary regulatory relief from the ELD requirements for the transportation of agricultural commodities.

Although this study was conducted in 2010 and relied upon data from 2005 through 2008, FMCSA has no reason to believe that the conclusions would be different if updated using more recent data. Although the 2010 studies did not focus on benefits achieved by use of ELDS, given the limited population of motor carriers affected by the waiver and the brief period of time a waiver is in effect, FMCSA believes that the level of safety maintained by transporters of agricultural commodities will be equivalent to the safety of operations that would be obtained absent the granting of a waiver.

FMCSA Determination

Considering the above studies, the ongoing review of the public comments submitted in response to the proposed regulatory guidance on the agricultural commodities exception to the HOS rules, and the pending exemption requests from NPPC and ARA, FMCSA has determined that it is in the public interest to provide a limited waiver from the use of ELDs for interstate motor carriers engaged in the transportation of agricultural commodities as defined in 49 CFR 395.2. The Agency believes this matter requires a decision based on the best available data, albeit dated, rather than delaying a decision until a new study can be conducted. This waiver will allow FMCSA time to evaluate the HOS exception applicable to the transport of agricultural commodities and to review the concerns unique to the agricultural industry. FMCSA grants the waiver to all motor carriers transporting agricultural commodities.

Terms and Conditions of the Waiver

(1) *Duration of the waiver.* This waiver is applicable March 18, 2018, through June 18, 2018.

(2) Motor carriers transporting agricultural commodities under the provisions of 49 CFR 395.1(k)(1), are exempt from the ELD requirements in 49 CFR 395.8(a) during the period of this waiver, regardless of the distance traveled.

(3) Carriers operating under this waiver must comply with all other applicable requirements of the Federal Motor Carrier Safety Regulations (49 CFR parts 390 through 399), including the preparation of records of duty status (RODS) for operations which are currently considered to be subject to the HOS rules and the record retention requirements associated with those RODS and supporting documents.

(4) Motor carriers operating under this waiver must have a “satisfactory” safety rating from FMCSA or be unrated; motor carriers with “conditional” or “unsatisfactory” safety ratings are prohibited from taking advantage of the waiver.

(5) Drivers operating under this waiver must carry a copy of this **Federal Register** notification and present it to motor carrier safety enforcement officials upon request.

(6) *Crash Notification to FMCSA*

Carriers operating under this waiver must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier’s drivers operating under the terms of this waiver. The notification must include the following information:

- (a) Identity of Waiver: “AG”
- (b) Date of the accident,
- (c) City or town, and State, in which the accident occurred, or closest to the accident scene,
- (d) Driver’s name and license number,
- (e) Co-driver’s name and license number (if applicable),
- (f) Vehicle number and State license number,
- (g) Number of individuals suffering physical injury,
- (h) Number of fatalities,
- (i) The police-reported cause of the accident,
- (j) Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations, and
- (k) The total driving time and total on-duty time period prior to the accident.

Accident notifications must be e-mailed to MCPSD@dot.gov.

Safety Considerations

Considering the limited period of this waiver and that it does not alter any of the HOS regulations other than the method of recording HOS, and the Agency's previous review of data concerning the safety performance of motor carriers engaged in the transportation of agricultural commodities, the Agency has determined that the waiver from the ELD requirements for 90 days is likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation.

FMCSA expects that any drivers and their employing motor carrier operating under the terms and conditions of the exemption will maintain their safety record. Should any safety problems be discovered, however, FMCSA will take all steps necessary to protect the public interest. Use of this waiver is voluntary, and FMCSA will immediately revoke the waiver for any interstate driver or motor carrier for failure to comply with the terms and conditions of the waiver.

Preemption of State Requirements

Consistent with 49 U.S.C. 31315(d), this waiver preempts inconsistent State or local requirements applicable to interstate commerce.

Issued on: March 16, 2018.

Raymond P. Martinez,
Administrator.